

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Elihu M. Berle, Chair
Case Management Subcommittee
Hon. Arthur E. Wallace, Chair
Patrick O'Donnell, Committee Counsel, 415-865-7665,
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DATE: October 2, 2003

SUBJECT: Memorandums of Points and Authorities; and Motions,
Applications, and Petitions not Requiring Memorandums (amend
Cal. Rules of Court, rule 313 and adopt rule 314) (Action Required)

Issue Statement

Rule 313, on memorandums of points and authorities, should be updated. Also, there are certain applications, motions, and petitions that are filed with the courts on Judicial Council forms that do not need memorandums in support. A separate new rule should specify these matters.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2004:

1. Amend rule 313 of the California Rules of Court to improve its style and to refer to new rule 314; and
2. Adopt rule 314, which specifies applications, motions, and petitions filed on Judicial Council forms in civil cases that do not require a supporting memorandum.

The text of amended rule 313 and new rule 314 is attached at pages 4–6.

Rationale for Recommendation

Rule 313 of the California Rules of Court would benefit from stylistic improvements. A cross-reference to new rule 314 has been added to rule 313. Some subheadings have been added. The statement that motions for a new trial are an exception is deleted because rule 236.5 requires a memorandum in support of such motions.

New rule 314 would recognize that certain papers generally filed on Judicial Council forms do not require memorandums, such as the motion to be relieved as counsel. The new rule would provide a list of applications, motions, and petitions submitted on Judicial Council adopted or approved forms that do not require a supporting memorandum. The rule would permit a party to submit, or the court to order, submission of a memorandum in support of any application, motion, or petition if it would further the interests of justice.

Alternative Actions Considered

The rules on the subject of memorandums might be left unchanged. This would leave uncertainty on the issue of whether memorandums must be submitted in support of various motions, applications, and petitions on Judicial Council forms. It would be better to eliminate this uncertainty than to leave the situation unchanged.

Comments From Interested Parties

Eight comments were received on this rules proposal.¹ The commentators included the State Bar's Committee on Administration of Justice, a local bar association, an attorney, a presiding judge, and three court administrators. The commentators generally supported the proposed rule changes. A few made specific comments and suggestions.

The state and local bar groups recommended retaining the provision in current rule 313 that a copy of non-California authorities and advance sheets of California cases must be provided with the motion papers. The committee agreed with this comment.

A court executive suggested modifying the provision in current rule 313 to provide that the out-of-state cases be lodged as a separate exhibit rather than attached to the motion papers. The committee agreed with this comment. The court executive also recommended deleting current rule 313(i), which requires that all material be attached, if practicable, to the notice of motion. The committee recommends

¹ A chart summarizing the comments is attached at pages 7–8.

retaining the existing provisions relating to the attachment of documents because they appear to be working effectively.

A commentator noted that there may be local court motions, petitions, and applications that do not require memorandums. The committee did not think that new rule 314 should be extended to attempt to cover the various local forms that might not require memorandums.

Finally, a court administrator suggested that Judicial Council forms that do not require a memorandum should so indicate in footer or under the form name in the title area. The committee did not think that such a notice needed to be included on all applicable forms. Rule 314 will provide a list of the forms that do not require a supporting memorandum.

Implementation Requirements and Costs

The new and amended rules should clarify the practices and procedures relating to the format and filing of memorandums in support of motions, applications, and petitions. No significant new implementation measures or costs are anticipated.

Attachments

Rule 313 of the California Rules of Court is amended and rule 314 is adopted, effective January 1, 2004, to read:

Rule 313. Memorandum of points and authorities

- (a) ~~[Notice of Memorandum in support of motion and or demurrer—~~
~~memorandum of points and authorities]~~ A party filing a demurrer or
a notice of motion, except for a new trial a motion listed in rule 214,
shall must serve and file therewith a memorandum of points and
authorities ~~to be relied on~~ in support. ~~The court may construe the~~
~~absence of the a memorandum may be construed by the court~~ as an
admission that the motion or special demurrer is not meritorious and
cause for its denial and, in the case of a demurrer, as a waiver of all
grounds not supported.
- (b) **[Contents of memorandum]** ~~A~~ The memorandum ~~of points and~~
~~authorities shall~~ must contain a statement of facts, a concise statement
of the law, evidence and arguments relied on, and a discussion of the
statutes, cases, and textbooks cited in support of the position advanced.
- (c) **[Case citation format]** A case citation ~~shall~~ must include the official
report volume and page number and year of decision. No other citations
~~shall~~ may be required.
- (d) **[Length of memorandum; requirements for lengthy memorandum]**
Except in a summary judgment or summary adjudication motion, no
opening or responding memorandum ~~of points and authorities shall~~ may
exceed 15 pages. In a summary judgment or summary adjudication
motion, no opening or responding memorandum ~~of points and~~
~~authorities shall~~ may exceed 20 pages. No reply or closing
memorandum ~~of points and authorities shall~~ may exceed 10 pages. The
page limit ~~shall not take into account~~ does not include exhibits,
declarations, attachments, a the table of contents, a the table of
authorities, or the proof of service.
- (e) **[Application to file longer memorandum]** A party may apply to the
court ex parte but with written notice of the application to the other
parties, at least 24 hours before the memorandum is due, for permission
to file a longer memorandum. The application ~~shall~~ must state reasons
why the argument cannot be made within the stated limit. A
memorandum ~~of points and authorities~~ that exceeds 10 pages ~~shall~~ must
include a table of contents and a table of authorities. A memorandum ~~of~~
~~points and authorities~~ that exceeds 15 pages ~~shall~~ must also include an

opening summary of argument. A memorandum that exceeds the page limits of these rules ~~shall~~ must be filed and considered in the same manner as a late-filed paper.

(e)(f) [Pagination of memorandum] Notwithstanding any other rule, the pagination of a memorandum ~~of points and authorities~~ that includes a table of contents and a table of authorities ~~shall be~~ is governed by this rule. In the case of such a memorandum, the caption page or pages ~~shall~~ must not be numbered; the pages of the tables ~~shall~~ must be numbered consecutively using lower-case Roman numerals starting on the first page of the tables; and the pages of the text ~~shall~~ must be numbered consecutively using Arabic numerals starting on the first page of the text.

(f)(g) [Use of California Style Manual] The style used in a memorandum ~~of points and authorities~~ shall must be that ~~set forth~~ stated in the *California Style Manual*; or ~~that set forth in the most recent edition of the~~ The Bluebook: Uniform System of Citation, at the option of the party filing the document. The same style ~~shall~~ must be used consistently throughout the memorandum.

(g)(h) [Copies of non-California authorities] If any authority other than California cases, statutes, constitutional provisions, or state or local rules is cited, a copy of the authority shall must be attached to lodged with the papers in which the that cite the authorities are cited and tabbed as exhibits as required by rule 311(e). If a California case is cited before the time it is published in the advance sheets of the Official Reports, a copy of that case ~~shall~~ must also be ~~attached~~ lodged and be tabbed as required by rule 311(e).

(g)(i) [Attachments] To the extent practicable, all supporting memoranda ~~ums~~ of points and authorities, declarations, and affidavits ~~shall~~ must be attached to the notice of motion.

(h)(j) [Exhibit references] All references to exhibits or declarations in supporting or opposing papers ~~shall~~ must reference the number or letter of the exhibit, the specific page, and, if applicable, the paragraph or line number.

(i)(k) [Requests for judicial notice] Any request for judicial notice ~~shall~~ must be made in a separate document listing the specific items for which notice is requested and ~~shall~~ must comply with rule 323(c).

1 ⊕(1) **[Proposed orders or judgments]** If a proposed order or judgment is
2 submitted, it ~~shall~~ must be lodged and served with the moving papers
3 but ~~shall~~ must not be attached to them.
4

5 **Rule 314. Applications, motions, and petitions not requiring a supporting**
6 **memorandum**
7

8 **(a) [Memorandum not required]** Civil motions, applications, and
9 petitions filed on Judicial Council forms that do not require a supporting
10 memorandum include the following:
11

- 12 (1) Application for appointment of guardian ad litem in a civil case;
- 13
- 14 (2) Application for an order extending time to serve pleading;
- 15
- 16 (3) Motion to be relieved as counsel;
- 17
- 18 (4) Motion filed in small claims case;
- 19
- 20 (5) Petition for change of name or gender;
- 21
- 22 (6) Petition for declaration of emancipation of minor;
- 23
- 24 (7) Petition for injunction prohibiting harassment;
- 25
- 26 (8) Petition for protective order to prevent elder or dependent adult
27 abuse;
- 28
- 29 (9) Petition of employer for injunction prohibiting workplace violence;
- 30
- 31 (10) Petition for order prohibiting abuse (transitional housing);
- 32
- 33 (11) Petition to approve compromise of claim of a minor or an
34 incompetent person; and
- 35
- 36 (12) Petition for withdrawal of funds from blocked account.
37

38 **(b) [Submission of a memorandum]** Notwithstanding (a), if it would
39 further the interests of justice, a party may submit, or the court may
40 order the submission of, a memorandum in support of any motion,
41 application, or petition. The memorandum must comply with rule 313.

SPR03-12

**Memorandum of Points and Authorities; and Applications, Motions, and Petitions Not Requiring Memorandums
(amend Cal. Rules of Court, rule 313; adopt rule 314)**

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Mr. Grant Barrett General Counsel Superior Court of California, County of Calaveras	A	N	Good work on these rules.	No response required.
2.	Committee on the Administration of Justice State Bar of California, San Francisco, California	A	Y	The Committee on the Administration of Justice (CAJ) supports this proposal in its entirety. CAJ does not believe subdivision (h) on non-California authorities or subdivision (i) on attaching papers to the notice of motion should be modified or eliminated.	The committee notes the support for the proposal. It agrees that neither subdivision (h) or (i) of rule 313 should be modified or eliminated.
3.	Mr. Robert Gerard President Orange County Bar Association	A	Y	The proposal to amend rule 313 of the California Rules of Court should be adopted in its entirety, including the new subdivision (h) and subdivision (i). The proposal to adopt rule 314 is also recommended in its entirety.	The committee agrees that (1) rule 313(h) and (i) should be retained, and (2) rule 314 should be adopted.
4.	Richard L. Haeussler Haeussler & Associates	A	N	Agrees with proposed changes, without specific comments.	No response necessary.
5.	Mr. Stephen V. Love Executive Officer Superior Court of California, County of San Diego	AM	N	It is not clear if this includes other case types besides civil (i.e., Probate). We suggest deleting rule 313(i). In re: 313(h) foreign materials should be lodged, rather than attached to the papers. The file becomes too big if the material is attached.	The issue has been referred to the Probate and Mental Health Advisory Committee to determine if the list in rule 314 should be expanded or a separate rule adopted to cover filings in probate proceedings. The committee disagrees with the suggestions to delete rule 313(i) or to modify rule 313(h) to require filing. If it is not practical to attach materials, they may be filed separately.
6.	Hon. Dennis E. Murray	A	N	Agrees with proposed changes, without specific	No response required.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

SPR03-12

**Memorandum of Points and Authorities; and Applications, Motions, and Petitions Not Requiring Memorandums
(amend Cal. Rules of Court, rule 313; adopt rule 314)**

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Presiding Judge Superior Court of California, County of Tehama			comments.	
7.	Tina Rasnow Coordinator Superior Court of California, County of Ventura	A	N	We generally agree. However, we suggest adding a category of pleadings that can be filed without a memorandum of points and authorities under rule 314 to include any local form motions, petitions, or applications. The reason is that some courts, including Ventura County's, have created fill-in-the-blank forms for common motions, petitions, and applications filed by self-represented litigants, such as motions for continuance, motion to reduce a judgment to a payment schedule, motion to set aside/vacate default/default judgment, petition to confirm arbitration award, etc. These motions are more dependent on the facts in a declaration than on points and authorities.	The committee disagrees with the suggestion to include local forms to the list in rule 314. The number and variety of such local forms make this impractical.
8.	Elena Simonian Court Administrator Superior Court of California, County of San Francisco	A	N	Suggestion to include "Memorandum not required" somewhere in the footer of the adopted JC form or under the form name in the title area.	The committee does not regard such a provision as necessary on all applicable forms. Rule 314 will provide guidance as to the applications, motions, and petitions that do not require a supporting memorandum.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.